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# Methylene Chloride / NMP Paint Remover – Rulemaking

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W.M. Barr & Company

Meeting with EPA

July 12, 2017



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# Introduction & Roadmap

- ❑ Introduction to W.M. Barr Co.
- ❑ Overview of Barr's Comments
- ❑ Barr's Proposal for an Alternative
- ❑ Next Steps

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# Introduction to W.M. Barr Co.

- ❑ Employee-owned manufacturer of consumer products, including paint removers, in business since 1946 and headquartered in Memphis
- ❑ Our employee owners include high-wage, hourly workers on the manufacturing line – all of whom participate in our profit-sharing program
- ❑ The leader in paint removal manufacturing, Barr has been producing methylene-chloride formulated products since for 68 years
- ❑ Our retail partners include: Home Depot, Lowe's, Ace, Walmart, Menards, Orchard and other home and hardware retail outlets
- ❑ Our customers include consumer-users (homeowners and do-it-yourselfers), commercial operations, and contractors
- ❑ Vast majority of our customers – (consumer and commercial users) – purchase our products in retail outlets which will very likely be foreclosed from carrying methylene chloride formulated products

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# Overview of Barr's Comments

- ❑ EPA proposed rule would prohibit retail sales of “consumer-use” sizes MeCl<sub>2</sub>, NMP paint strippers
- ❑ Barr submitted timely comments May 19, 2017
  - ❑ Expert reports submitted with comments:
    - The Health Risk Basis for the Proposed Rule
    - Incident Data and Adverse Effects Data Trends
    - Regulatory Alternatives to EPA Proposal
    - The Comparative Efficacy of Alternative Products
    - Economics and Cost and Benefits of Proposed Rule
    - Flammability Analysis of Alternative Products

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# Overview of Barr's Comments

## ❑ Key Arguments

- ❑ The Proposed Rule relies on a flawed hazard and risk assessment
- ❑ The Proposed Rule failed to consider actual data on exposures and incidents, for MeCl<sub>2</sub> and for alternative products
- ❑ EPA did not properly consider the benefits of the products it proposed to prohibit
- ❑ The Agency did not accurately assess the availability of technically and economically feasible alternatives
- ❑ EPA failed to fully consider the public health risks of MeCl<sub>2</sub> products compared to alternative products
- ❑ The Agency significantly underestimated the economic impacts of the proposed Rule, especially to small businesses and product users
- ❑ EPA did not conduct a thorough evaluation of alternative risk mitigation strategies



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## Flawed Hazard and Risk Assessment

- ❑ EPA's risk assessment relies on modeling that overstates exposure to consumer users and exaggerates risk
- ❑ Relied upon modelling rather than undertaking exposure study
- ❑ Relied upon inappropriate PODs
  - ❑ Relied upon “off the shelf” PODs rather than develop its own POD
  - ❑ Did not use a POD derived using PBPK analysis such as EPA used for other MeCl<sub>2</sub> risk assessments; did not follow NAS guidelines
- ❑ Relied on overly conservative assumptions to drive modelling
  - ❑ Included bathtub-stripping scenario even though Barr warns against bathtub stripping
  - ❑ Did not consider outdoor uses, even though a common occurrence
  - ❑ Incorrectly assumes “double” applications of stripper with each use
  - ❑ Overstates length of time of exposure
  - ❑ Included supplemental scenarios not peer reviewed
- ❑ Did not consider or carefully compare risks of alternative products

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# Improper Consideration of Incident Data

- ❑ EPA did not undertake thorough analysis of poison control center (AAPCC) incident data
  - ❑ Relied instead on flawed analysis of Center for Public Integrity
- ❑ Exposure incidents involving  $\text{MeCl}_2$  are low and declining
  - ❑ Significant decline in incidents in all categories, despite rise in market share
  - ❑ Only one reported fatality, which involved confounding factors
  - ❑ Alternative products have similar or greater number of incidents
- ❑ EPA's review of fatal incidents does not support consumer-use concerns
  - ❑ Vast majority of incidents are occupational use
  - ❑ Over past 40 years, only one explicitly involved a consumer use, and it also involved another chemical

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## Inadequate Consideration of Benefits for Retail Paint Stripper Products

- ❑ W.M. Barr studies show that MeCl<sub>2</sub> products are more effective than alternatives
  - ❑ Barr study used ASTM methods; EPA did not do any efficacy testing
  - ❑ Barr made efficacy information available to EPA during small business consultation prior to proposed rulemaking
- ❑ Smaller containers reduce risks from accidental spills and environmental releases
- ❑ Alternatives require more time to work and thus increase duration of exposure



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## Inadequate Assessment of Alternative Product Risk

- ❑ AAPCC incident data
  - ❑ increasing trend in incidents involving alternative products
  - ❑ declining trend for MeCl<sub>2</sub>
  - ❑ even more significant in light of market shares
- ❑ Data relied upon by EPA did not consider incidents involving alternative products
- ❑ CTEH analysis concluded that most alternative products pose unreasonable risks; e.g.:
  - ❑ Benzyl alcohol is eye, nose, throat, skin and lung irritant
  - ❑ Generates twice the hazardous waste as MeCl<sub>2</sub> products
  - ❑ ATM is carcinogenic; flammable; causes neurological effects

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## Inadequate Assessment of Comparative Flammability for Paint Stripper Products

- ❑ CPSC warned EPA about flammability risk of alternative products
- ❑ EPA did not conduct flammability analysis
  - ❑ Described such an analysis as “impracticable”
- ❑ Barr presented a report on flammability analysis
  - ❑ MeCl<sub>2</sub> has one of the lowest Flammability Hazard Ratings of paint remover ingredients
  - ❑ MeCl<sub>2</sub> products – considered in combination with other chemicals – have lower fire risk than ATM products

## EPA Must Consider Overall Environmental Risks of Alternative Products

- ❑ EPA did not conduct a comprehensive side by side chemical analysis
- ❑ MeCl<sub>2</sub> & NMP
  - ❑ Not ozone depleting chemicals
  - ❑ Acceptable under CAA SNAP program
  - ❑ Not considered a VOC
  - ❑ MeCl<sub>2</sub> is Biodegradable
  - ❑ NMP has low GWP
- ❑ Benzyl Alcohols
  - ❑ VOC
  - ❑ Potential CAA impacts

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## Greater Weight Should be Given to Consideration of Economic Impacts Applying Both TSCA and OMB Standards

- ❑ EOs 12866, 13563, & 13777, and amended TSCA Sec. 6 require EPA to apply greater weight to economic impacts
- ❑ EPA's own analysis suggests that NPRM costs dramatically exceed benefits
- ❑ But EPA understated costs of Proposed Rule in meaningful ways, including:
  - ❑ Failure to consider lost profits
  - ❑ Improper assumption of cost "savings"
  - ❑ No consideration of the following increased costs of using alternative products
    - Prices
    - Health risks
    - Flammability risk
  - ❑ Inadequate consideration of consumer impacts
    - Costs of transitioning to using professional contractors
    - Costs of transitioning to mechanical means
  - ❑ Underestimated impacts to industry and small businesses
- ❑ No evidence of EPA "market failure" hypothesis



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# EPA Did Not Carefully Consider Regulatory Alternatives

- ❑ Section 6 and EOs require consideration of alternatives
- ❑ EPA improperly rejected improved labelling
  - ❑ Relied upon flawed “meta-study”
  - ❑ Rejected evidence showing effectiveness of labelling
    - Agency relies on labelling in other contexts
  - ❑ Did not consider most recent Barr label changes
    - Warnings regarding bathtub use
  - ❑ Analysis of fatality data demonstrates effectiveness of warnings
- ❑ Did not consider collaboration with CPSC
- ❑ Did not consider on-going ASTM process
- ❑ Did not consider strategies in its own risk assessment
  - ❑ Use of vapor retardant
  - ❑ Use of brush on rather than spray on applications

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## Failure to Adequately Consult with Other Agencies

- ❑ TSCA Section 9 consultation should be reassessed in light of most recent Executive Orders
- ❑ Potential duplication with OSHA and CPSC
  - ❑ OSHA has substantial authority to address workplace risks
  - ❑ CPSC has authority over retail-sale consumer use paint strippers under CPSA and FHSA, including labelling
- ❑ EPA failed to consider using existing NESHAP authority
- ❑ Failure to consider voluntary standards of industry
  - ❑ ASTM standard under development

# Conclusion: Proposed Rule Does Not Meet Statutory Standards

- ❑ Proposal and methods used do not meet standards of amended Section 6(a)
  - ❑ Weight of evidence does not show unreasonable risk
- ❑ Agency's analysis does not satisfy criteria of amended Section 6(c); weight of evidence does not support Agency conclusions
  - ❑ Alternative products are neither technologically nor economically feasible
  - ❑ EPA must adequately and accurately assess costs and benefits
  - ❑ The Agency should consider regulatory alternatives in good faith
- ❑ Proposal did not rely on "best available science" under Section 26
  - ❑ Failure to critically analyze incident data
    - Reliance on flawed third party assessment
  - ❑ Ignored comparative efficacy of alternatives
    - Failure to use studies relying on ASTM methods
  - ❑ Did not employ PBPK methods/modelling
  - ❑ Relied on consumer exposure modeling which did not depict even a "reasonable worst case"
  - ❑ Dismissed comparative flammability issue without technical evaluation or analysis
  - ❑ Inappropriately relied on superficial review of labelling information rather than studies specific to paint removers
- ❑ EPA should consult with other agencies under Section 9 on alternative regulatory approaches

## Barr's Proposal for Addressing Potential Risks to Consumer-Users of MeCl<sub>2</sub> Retail Products

- ❑ Withdraw retail products portions of MeCl<sub>2</sub>/NMP proposal
- ❑ Collaborate with industry, CPSC & SBA to develop industry-wide labelling standard
  - ❑ Targeted to consumer-size products
  - ❑ Use of MeCl<sub>2</sub> only in well-ventilated spaces
  - ❑ Prohibit consumer-use of MeCl<sub>2</sub> in bathtub stripping
  - ❑ Require use of dermal protection for NMP
  - ❑ Use of pictograms and bilingual text on labeling
  - ❑ Consistent with CPSC labelling efforts
  - ❑ Participate in ASTM process



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# Questions/Discussion

- ❑ Barr comments and expert reports
- ❑ Barr proposal for alternative approach
- ❑ Timeline/Next Steps